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Re: Patent Application for Dornelas  
Serial 09/578,194

No.:

Filed: 05/24/00

For: Modulation of Storage Organs

Date: May 29, 2002

Art Unit: 1635

Examiner Schmidt, M

:

Action: 2<sup>nd</sup> preliminary  
amendment  
and Response to  
communication of April  
30, 2002

TECH CENTER 1600/2900

JUN 17 2002

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To: The Commissioner of Patents and Trademarks, Washington, DC 20231

**Second Election with Traverse and Amendment to claim 1**

The Examiner requested in the initial paper of August 13, 2001 an election of the two alleged inventions one being to claims 1-12 and 15-24 concerning sense and the second invention being directed to claims 1-24 concerning antisense. The applicant hereby elects claims 1-24 concerning antisense with traversal. To the extent that the earlier paper from applicant selected the other invention the applicant asks that that election be ignored and this election be employed.

Additionally the applicant was requested to elect an invention directed to a species of genes from the ASK genes of Group II. The applicant elects, with traverse, the dzeta Ask gene of Group II.

Further the applicant was requested to elect an invention directed to a species of plant for search and examination of the invention. The applicant elects the plant Arabidopsis with traverse.

The applicant in an effort to have the restriction requirement removed amended claim one of the application with the previous response. The Examiner did not consider this amendment sufficient to remove the restriction requirement. Therefore, in this response the applicant deletes the amendment that was previously submitted. Attached is a set of claims showing the deletion of the previous amendment and a clean set of claims that reflect the claims after the deletion was made.

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## Traversal

**To restrict the claims and cause an election the Examiner has to show that the inventions are INDEPENDENT.**

The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect, for example: (1) species under a genus which species are not usable together as disclosed; or (2) process and apparatus incapable of being used in practicing the process. The specification clearly indicates that more than one of the Ask gene group II, is useable together. The Examiner has not shown that the alleged ASK gene Group II are actually independent inventions under this criteria.

**The Examiner must also show that the inventions are patentably distinct and the criteria for restriction between patentably distinct inventions are:**

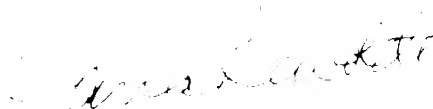
- (A) The inventions must be independent or distinct as claimed; and
- (B) There must be a serious burden on the examiner if restriction is required.

The Examiner has not shown that where inventions (which are related as disclosed in the specification) are either independent or distinct as claimed. The prima facie burden of the Examiner has not been met by alleging that these claims are directed to inventions which are species.

The applicant is not suggesting that if these inventions are directed to species that the species are not patentably distinct. However, the Examiner alleging that the inventions which are directed to different plants and genes as claimed, are inventions to species is simply not sufficient to make a case that these plants and gene are inventions to separate species. And the second part of the requirement to make a restriction has simply not been shown. The Examiner has not shown that the inventions are in separate search classifications and that it would be a **SERIOUS BURDEN** to search these alleged inventions.

The applicant hereby traverses the Examiner's restriction requirement and makes the above identified elections and respectfully requests in light of the applicant's argument that the Examiner reconsider the restriction requirement and removed such restriction requirement.

Respectfully submitted,



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I hereby certify that attached is a postcard and this 2<sup>nd</sup> election with traversal and preliminary amendment and two set of claims one modified and one showing the changes to the claims is which being deposited on May 29, 2002 and is addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Ruth Anderson

09/578,194 Ruth Anderson